

M o t i v a t i o n .

As defendant of Mar. Oberstabsarzt, Dr. Walter Weiss -
pfennig, I beg to submit the following against the sentence of Oct.
20th 1945 :

It is proved that Weisspfennig had received the direct or-
der from the commander to shoot at pieces of wreckage and that
Weisspfennig has executed this order. Weisspfennig was just as bound
as anybody else on the U-boat to execute the orders of the commander,
because the commander alone holds the responsibility for the orders
given by him.

There may be a difference between Weisspfennig and the
other ~~xx~~ accused inasmuch as Weisspfennig is a physician and as such
he is obliged not to use any weapon for offensive purposes. If he
had received an order to shoot at human beings he would have had to
refuse this order and would have actually done so. In this ^{case} question
however the weapon was not used for an offensive purpose. Weisspfen-
nig had received the order to shoot at pieces of wreckage and did not
consider this an action which was prohibited for him by the rules
valid for physicians. Also to the physician shooting as such is not
prohibited. Every physician is trained with arms so that he can use
them for his own protection or for the protection of wounded men
in his care. It is only forbidden to him to actually take part in
a fight as the order of the commander did not demand an offensive
action of Weisspfennig, he executed this order. His position in
view of these facts is therefore not different to the other ones
concerned in this case.-

After being sentenced Weisspfennig expressed himself
in writing as follows :

" In the night of 13th/14th March 1944 I entered the bridge

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of the boat after the torpedoes had been fired. I only saw a part of the sinking steamer which immediately sunk. I was not standing directly at the bridge-railing so that I could not see all that happened. The boat was not lying quietly but was moving up and down. Shouts were to be heard which however ceased before a member of the sunk steamer came on board. I have not seen anything of the interrogation, neither have I seen any lights on the rafts. I intended to point this out in my last word which however was not granted to me. In order to eliminate the traces of the sunk steamer the floating pieces of wreckage should be brought below the water. For this purpose a MG was fixed at the starboard side. On the bridge were the commander, the officer of the watch Ob. Leutnant Colditz and the action-bridge-watch. I myself received the direct order to shoot from the commander, he was standing beside me. I could not object to this order, at the moment nobody else was at hand. (Ob. Leutnant Colditz was look-out and had to supervise the action-bridge-watch and could not leave his post. He was not a warrant-man but was officer of the bridge-watch and had to watch his sector). As I knew the commander for a long time it did not come into my mind that he could demand from me an unlawful act by this order. On the star-board side pieces of wreckage were to be seen, but no human being, neither the others have seen human beings at this side, otherwise they certainly would have told me so. I regarded my order in such a way that I should not shoot at human beings.

After the first burst of fire the MG. failed and somebody else removed the stoppage and went on to shoot. I know that I as a physician am not allowed to use a weapon for offensive purpose, however it is not offensive to destroy pieces of wreckage. As I did not receive any order to shoot at human beings I felt no scruples even as a physician to shoot because in this case the weapon was not used for offensive purposes. In the same way as I would have considered myself justified to shoot at a mine if I had received the order, without violating the convention of Geneva, I considered myself justified to shoot at the pieces of wreckage.

This patrol was the first for me, even the first board-command during the war. The sinking of the steamer was also my first sinking. The long and unaccustomed voyage in a submerged state, the heat in the tropics had torn at my nerves considerably and I had the same impression of the other officers and the crew. The chasing and the sinking of the steamer had caused with all of us considerable unrest and excitement. To this must be added the stay in this area which was especially exposed to hostile air-attacks, only a few days before we were twice sighting and airplaned. So far the commander had conducted his boat safely through all these dangers. I also had to suppose in this moment that he wanted to do only the best for the security of the boat and its crew without violating any laws. I therefore saw no reason and had no time at all to oppose this order or to make any objections.

I request to again examine my sentence and to take into consideration the above-mentioned reasons."

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In the main proceedings it was not proved that Weisspfennig was aware of the fact that it was an unlawful order, an order which demanded of him a punishable act. With this it is established that Weisspfennig was bound to obey. Nobody can deny the generally recognized obligation of a subordinate towards the order of his superior. Nobody can expect that a subordinate brings himself into a state of emergency by not obeying an order and risks to be accused later for disobedience or to expose himself to the martial law of the commander.

It is to be remembered that the British military penal law in article 443 land warfare as printed in the manual of military law, does not hold the captive enemy responsible if he has acted on basis of a binding order.

Also after the changing of this article one must say that a punishment can only take place if obedience to military orders is obviously unlawful. However, in this case it was by no means clear to Weisspfennig that something obviously unlawful was demanded of him.

Also the British Government recognizes the fact that the order of a superior does not make the subordinate responsible, as is proved by the famous "Caroline"-case. In this case a British ship had sunk an American one. The British Government demanded the release of those responsible because the action proved to be :
" A public act done by persons in her Majesty's Service, acting in obedience to superior orders and that the responsibility, if any, rested with her Majesty's Government." (compared Pitt. Corbett, Leading cases on international law, 4th Edition, London 1922 page 85)

Also from the fact that the British Government did not oppose the Reichsgerichts-sentence of June 4th 1921 in the "Dover-castle" case it is evident that it has no objections to make

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against the principle that the commanding superior alone is responsible and that the subordinate can only be punished if he was aware of the illegality of the order, which must be proved to him. The matter in question was a Reichsgericht- decision according to which a U-boat commander who had sunk a hospital-ship was acquitted as he had acted on higher orders. This decision does not stand in contradiction to the decision of the same court dated July 12th 1921 in the "Llandovery-Castle" case in which 2 officers of the watch of a U-boat were sentenced to 4 years prison for manslaughter because the U-boat had shot at life-boats. In this case too the Reichsgericht recognizes that the superior alone is responsible and the subordinate only in case he knew that this order constituted an act which purposed a crime. In this case the Reichsgericht could punish the 2 officers because it considered it proved that the accused knew that the execution of the order purposed only a crime. This prove is not brought about in the present case, a punishment therefore should not take place.

Weisspfennig as subordinate was bound to execute orders and he as well as the other members of the crew had no right to examine the order for its lawfulness, he could not know if the commander purposed a punishable action. In the contrary, he was of the opinion that the execution of the order was a military necessity. It must be considered that it was his first patrol against the enemy and he could not know which secret-orders the commander had and if he decided to give the order on basis of such secret-orders for military reasons. If the accused had already made several patrols or if several steamers would have been sunk during this first patrol he surely would have thought more thoroughly about this order which was quite different from the general routine. As, however, it was his first patrol and the first case of sinking a vessel he did not stop to reason but simply executed the order.

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The accused has always denied to have known that the purpose of this order was only murder. He believed in the military necessity to remove the pieces of wreckage. The thought could not come into his mind that the commander, who was so highly appreciated by him, could demand a punishable action from him. He therefore relied upon the judgment of his commander and acted in loyalty to him. His faith that the commander only demanded what was right must excuse him. The commander alone is responsible for the guidance, he is the brain and the eye of his whole crew, because he alone sees the fighting actions and only he alone can therefore decide what has to be done. The others have to obey blindly, U-boat men are trained that way and are accustomed to it.

So in the "Daily Telegraph" of October 24th. 1945 it is written as follows:

"Admiral of the Fleet the Earl of Cork and Orrery, referring to the death sentence of officers of a U-boat crew for killing the crew of a vessel they had torpedoed, said that the man who should be tried was the captain, who had given the orders to shoot."

If, however, one is willing to recognize the verdict and to declare Weisspfennig guilty, it appears that the death penalty to which he is condemned is too high considering the special circumstances. There are so many extenuating circumstances in favor of Weisspfennig that it does not appear necessary to extinguish his life. The sentence would not only hit him but would also hit his family extraordinarily hard, Weisspfennig is married and father of two little children. The last child was born when he was prisoner of war, he did not even see it yet. He is the sole supporter of his family. All the relatives of his wife are victims of the war. His wife and his 2 little children are without any means and help.

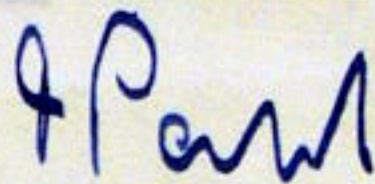
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I therefore request to change the sentence against Weisspfennig into imprisonment. He certainly is worthy of such grace as he, except for this one case, has led a blameless life as man as well as a soldier and was ever ready to help all others.

The defendant:

Hamburg, October 26th.1945.

Sir,



Being the wife of Marinistabsarzt Dr. Walter Weisspfennig, I am turning to you to save the life of my husband, both for my own sake and the sake of my children. I have two small daughters aged one and three years. (The youngest one had never seen her father.) It is only natural that we love him with all our hearts, and that his death sentence shatters our life completely. We have lost everything in the war, and my husband was our only support. Only a year ago my home town was bombed and both my father and my dear mother, whose love I shall never forget, were killed, as well as all my other relatives that were staying with us. I had hardly recovered from the terrible shock, when fate dealt a much more terrible blow at me. Having lost all our relations, the life of my husband has become very precious to us. The execution of my husband would also be a terrible punishment to us and my poor children.

I am putting all my faith and hope in your kindness Sir, and I implore you with all my heart to let him live, who means everything to us, - who has been the best of fathers and whom I love more than my very life.

I remain, Sir,

Your obedient servant

